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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,398	08/15/2001	Christine Carlucci	866.0002	1023
37004	7590	01/20/2006		
POWER DEL VALLE LLP 233 WEST 72 STREET NEW YORK, NY 10023			EXAMINER EREZO, DARWIN P	
			ART UNIT 3731	PAPER NUMBER

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/930,398	<b>Applicant(s)</b> CARLUCCI ET AL.	
	<b>Examiner</b> Darwin P. Erez	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/07/05 has been entered.

### *Claim Rejections - 35 USC § 102*

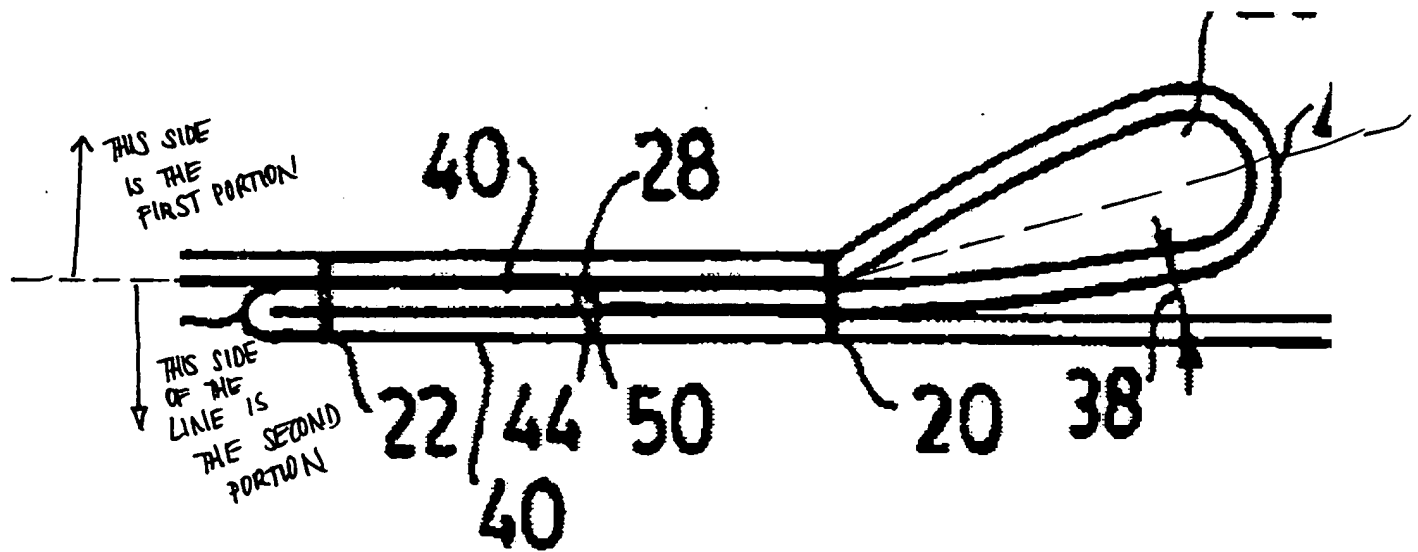
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,446,953 to LeFeber.

(claim 1) LeFeber teaches a device capable of securing medical tubing to a body comprising a circular one-piece fabric band **10**, wherein a first portion of the band (as illustrated in the attached figure below) is attached to no more than a second portion of the band (see figure below) such that the band is divided into at least a first closed loop **24** adapted to fit elastically around a portion of the body (Fig. 6) and a second closed loop **26** capable of receiving and holding a medical tubing. LeFeber teaches an elastic band (col. 2, lines 44-46).



(claim 2) LeFeber teaches an elastic band that is fully capable of fitting around a user's head, especially since it could fit around a user's arms.

(claim 3) LeFeber teaches the fabric band comprising non-irritating material (various elastic fabric are provided in col. 2, lines 44-66, such as a quilted composite fabric or spandex in col. 3, line 21).

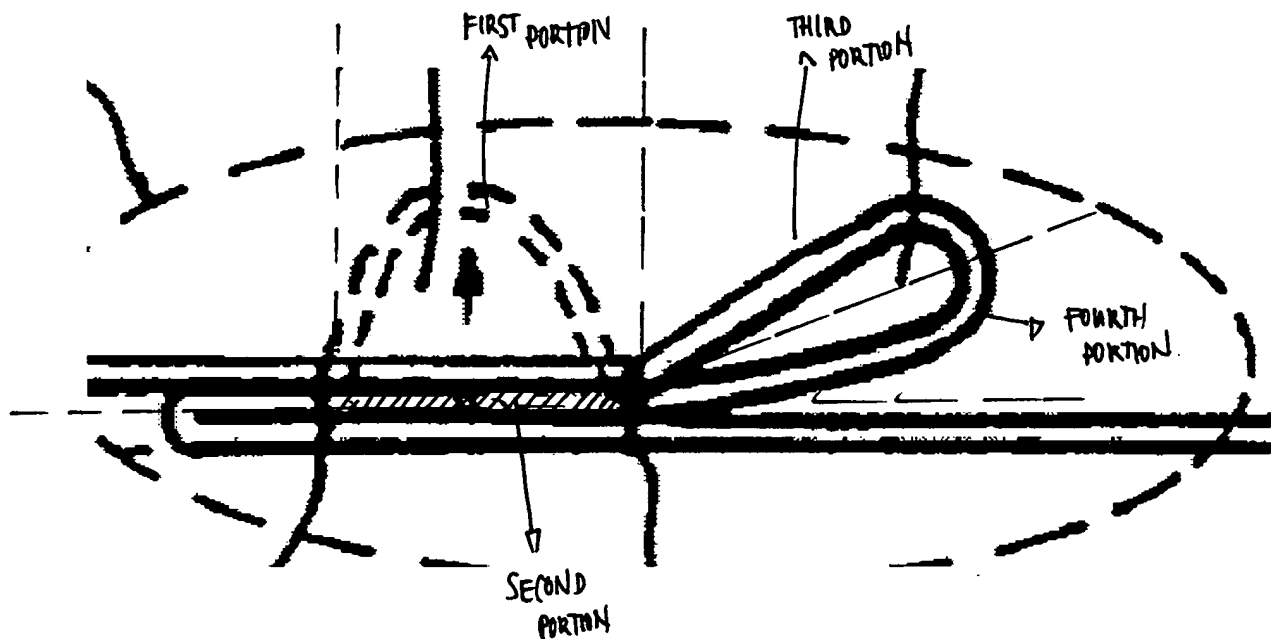
(claim 4) LeFeber teaches the fabric band lined with friction creating material (textured polyester; col. 3, lines 26-31). A textured material would provide friction compared to a smooth material.

(claim 5) LeFeber teaches the loops formed from stitching (col. 2, lines 47-50).

(claims 6, 10 and 11) LeFeber teaches a device capable of securing a medical tubing to a body comprising a circular one-piece fabric band **10** wherein a first portion of the band is attached to no more than a second portion of the band and a third portion of the band is attached to no more than a fourth section of the band, (see figure below) such that the band is divided into a first closed loop **24** adapted to fit elastically around a

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portion of the body; a second closed loop 26 and a third closed loop 28, wherein the second and third closed loops are fully capable of holding and receiving medical tubing close to a body; and wherein the loops are stitched together (col. 2, lines 47-50).



(claims 7 and 12) LeFeber teaches an elastic band that is fully capable of fitting around a user's head, especially since it could fit around a user's arms.

(claims 8 and 13) LeFeber teaches the fabric band comprising non-irritating material (various elastic fabric are provided in col. 2, lines 44-66, such as a quilted composite fabric or spandex in col. 3, line 21).

(claims 9 and 14) LeFeber teaches the fabric band lined with friction creating material (textured polyester; col. 3, lines 26-31).

***Response to Arguments***

4. Applicant's arguments filed 11/07/2005 have been fully considered but they are not persuasive.

5. Applicant's amendments to the independent claims do not read over the previously applied art to LeFeber. The applicant attempts to read over the prior art is not persuasive since the amendments merely recite a band having different portions. As illustrated above, the Examiner is able to provide different portions for the band of LeFeber that reads on the claim language.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GLENN K. DAWSON  
PRIMARY EXAMINER